

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 46

By: Trial Section Merits Panel
Board of Patent Appeals and Interferences
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DODD H. GRANDE, ANTONIN A. MEIBOCK
and JOHN E. SVENSSON
Junior Party,
(U.S. Patent No. 5,797,610)

v.

LAURENT BONAVENTURE
and JEAN-LOUIS DEMARCHI
Senior Party,
(U.S. Application No. 09/662,636)

Patent Interference No. 105,283

Before: LEE, TORCZON and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.¹

JUDGMENT - MOTIONS - Bd. R. 127

¹ As part of the Board's efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, in this case papers originating at the Board will not have signatures. The signature requirements for the parties have not changed. See e.g., 37 C.F.R. § 10.18.

I. Introduction

The interference was declared on 16 December 2004 between junior party DODD H. GRANDE, ANTONIN A. MEIBOCK and JOHN E. SVENNSON (“**Grande**”) and senior party LAURENT BONAVENTURE and JEAN-LOUIS-DEMARCHI (“**Bonaventure**”). Grande is involved in the interference on the basis of U.S. Patent 5,797,616, issued 25 August 1998, based on U.S. application 08/799,858, filed 13 February 1997. Bonaventure is involved in the interference on the basis of U.S. application 09/662,636 (“the ‘636 application”). The ‘636 application has been accorded benefit for the purpose of priority of (i) U.S. Patent 6,196,556, issued 6 March 2001, based on U.S. application 08/759,416 (“the ‘416 application”), filed 5 December 1996, and (ii) French application 95.15016 (“the French application”), filed 8 December 1995). [Paper 1]

The sole motion filed in the interference was Grande motion 1 attacking the benefit accorded Bonaventure of the 5 December 1996 and 8 December 1995 filing dates of its earlier filed ‘416 and French applications, respectively. Grande motion 1 has been denied (Paper 45). Normally, we would proceed to the priority phase of the interference where each party submits evidence to prove dates of invention. Here, however, the earliest priority date alleged by junior party Grande, 6 September 1996 (Paper 32), is subsequent to the 8 December 1995 filing date of the French application accorded senior party Bonaventure. According to 37 CFR §41.204(a)(3), “[i]f a junior party fails to file a priority statement overcoming a senior party’s accorded benefit, judgment shall be entered against the junior party absent a showing of good cause.” In

this case, the showing of good cause has already been addressed in Grande motion 1 attacking senior party Bonaventure's accorded benefit. Since Grande motion 1 has been denied, Bonaventure is entitled to prevail on the issue of priority and it is appropriate to enter a judgment against junior party Grande.

II. Order

Therefore, based on the foregoing, it is

ORDERED that judgment on priority as to Count 1 (Paper 1, p. 5) is awarded against junior party DODD H. GRANDE, ANTONIN A. MEIBOCK and JOHN E. SVENNSON;

FURTHER ORDERED that junior party DODD H. GRANDE, ANTONIN A. MEIBOCK and JOHN E. SVENNSON is not entitled to a patent containing claims 1-38 (corresponding to Count 1);

FURTHER ORDERED that if there is a settlement agreement and it has not already been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661; and,

FURTHER ORDERED that a copy of this judgment (Paper 46) and of the decision on motions (Paper 45) be given appropriate paper numbers and entered into the file records of U.S. Patent No. 5,797,610 and U.S. application 09/662,636.

<u>\ss\ Jameson Lee</u>)	
JAMESON LEE)	
Administrative Patent Judge)	
)	
<u>\ss\ Richard Torczon</u>)	BOARD OF PATENT
RICHARD TORCZON)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
<u>\ss\ Carol A. Spiegel</u>)	
CAROL A. SPIEGEL)	
Administrative Patent Judge)	

cc (via overnight delivery):

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